

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PAUL POGUE and)	
PAUL POGUE, in his capacity as)	
owner of SURVEYORS' PARK)	
)	
Plaintiffs,)	CIVIL ACTION NUMBER
)	
v.)	2:06-cv-148-MHT
)	
TONY CHANDLER, et al.,)	
)	
Defendants.)	

MOTION TO DISMISS AND

ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

Come now Defendants Tony Chandler and Danny Clark by and through Troy King, Attorney General for the State of Alabama and Assistant Attorneys General Linda C. Breland, Charles T. Conway, James W. Davis, and Winfield J. Sinclair and, pursuant to Rules 12(b)(6), 12(b)(1), and 41(b) of the Federal Rules of Civil Procedure, hereby respectfully move this Honorable Court to dismiss the Complaint of the Plaintiff, Paul Pogue. In the alternative, the Defendants respectfully move this Honorable Court to grant them summary judgment against the Plaintiff because there is no genuine issue as to any material fact and the Defendants are entitled to

summary judgment as a matter of law. As grounds therefore, the Defendants state the following:

1. The Plaintiff has failed to state a claim upon which relief can be granted and therefore this Court lacks subject matter jurisdiction over the Defendants.
2. The Plaintiff has failed to establish that a case or controversy exists and lacks standing to maintain this action. Therefore, this court lacks subject matter jurisdiction over the Defendants.
3. The Plaintiff has failed to prosecute his claim.
4. The Plaintiff has not established a *prima facie* case of discrimination.
5. The Plaintiff's claims against the Defendants in their official capacities are barred by the Eleventh Amendment.
6. The Defendants are entitled to qualified immunity as to the Plaintiff's claims against the Defendants in their individual capacities.
7. Even if the Plaintiff could prove a violation of his Fourteenth Amendment rights, the Defendants would have reached the same conclusions and taken the same actions regardless of any unlawful motive or intent.

This Motion is based upon the pleadings, the deposition of the Plaintiff, affidavits and exhibits attached thereto, and the brief submitted herewith.

Respectfully submitted,

TROY KING
ATTORNEY GENERAL
KIN047
BY

s/Linda C. Breland
Assistant Attorney General
BRE001

s/Charles T. Conway
Assistant Attorney General
CON029

s/James W. Davis
Assistant Attorney General
DAV103

s/Winfield J. Sinclair
Assistant Attorney General
Attorney No. ASB-1750-S81W

Attorneys for Defendants
Chandler and Clark

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of September, 2006, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, and that a copy of the same has been sent by First Class Mail to the plaintiff:

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s/Charles T. Conway
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